

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

HUGHETTE CRUMPLER,	)	CASE NO. C-1-02-131
	)	
Plaintiff,	)	JUDGE SUSAN J. DLOTT
	)	
vs.	)	
	)	
TELXON CORPORATION, et al.,	)	
	)	
Defendants/Third-Party	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
JOHN W. PAXTON, SR.,	)	
	)	
Third-Party Defendant.	)	

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**NOTICE OF JUDGE DOWD'S ORDER VACATING  
"PROPOSED MEMORANDUM AND OPINION"**

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Defendants/Third-Party Plaintiffs Telxon Corporation ("Telxon") and Symbol Technologies, Inc. hereby advise this Court that Judge David D. Dowd, Jr. of the United States District Court for the Northern District of Ohio has vacated the "Proposed Memorandum and Opinion" cited in, quoted from, referred to, and relied upon by both Plaintiff Hughette Crumpler ("Crumpler") and Third-Party Defendant John W. Paxton, Sr. ("Paxton") in their reply memoranda (and also attached as exhibits thereto) in this case, all in violation of Judge Dowd's order placing that "Proposed Memorandum and Opinion" under seal. (A copy of Judge Dowd's October 22, 2003 vacating Order appears as Exhibit A attached to this Notice.)

Judge Dowd's vacating Order also specifically mandates that "the Proposed Memorandum Opinion SHALL NOT be distributed to anyone." See Exhibit A (emphasis in original). Filed before this Court are motions to strike both Paxton's and Crumpler's improper uses of the "Proposed Memorandum and Opinion" and for sanctions.<sup>1</sup> Judge Dowd's vacating Order confirms that the "Proposed Memorandum and Opinion" should not have been put in the public record or before this Court in this case, and that sanctions are clearly warranted.

Both Paxton's and Crumpler's conduct was undeniably improper.<sup>2</sup> Judge Dowd specifically placed the "Proposed Memorandum and Opinion" under seal because it was merely proposed for discussion purposes at the oral hearing. Paxton and Crumpler expressly disregarded Judge Dowd's Order that the document be kept under seal. In fact, astoundingly, Paxton did so after Telxon and Symbol had filed their first motion to strike.

Telxon and Symbol have been compelled to file multiple motions and related papers, and necessarily burden two separate federal district court judges as a result of Paxton's and Crumpler's misconduct. Accordingly, Telxon and Symbol respectfully request that this Court strike from the public record all appearances of the sealed, and now vacated, proposed order; all quotations from, references to, and arguments based upon it; and all motions, briefs, or other filings that contain them; that this Court publicly reprimand Paxton's and Crumpler's counsel; and that this Court order that

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<sup>1</sup> Briefing is not complete with respect to Telxon and Symbol's Motion to Strike Paxton's "Attachment A" (the improperly obtained, improperly cited, and improperly filed "Proposed Memorandum and Opinion") and any references thereto in his publicly filed Reply Memorandum, as Paxton has not yet filed any response or opposition.

<sup>2</sup> Paxton's counsel in the Northern District of Ohio case stated to Judge Dowd that he had expressly informed Paxton's counsel in this case that the "Proposed Memorandum and Opinion" was filed under seal and was not to be used.

Telxon and Symbol recover a reasonable sum for the legal fees and expenses that they necessarily have incurred.

Respectfully submitted,

OF COUNSEL:

GOODMAN WEISS MILLER LLP

/s/ Steven J. Miller  
STEVEN J. MILLER (0014293)  
JAMES S. WERTHEIM (0029464)  
JON J. PINNEY (0072761)  
100 Erieview Plaza, 27th Floor  
Cleveland, OH 44114-1882  
(ph.) 216-696-3366 • (fax) 216-363-5835  
miller@goodmanweissmiller.com  
pinney@goodmanweissmiller.com

**Attorneys for Defendants/Third-Party  
Plaintiffs**

**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2003, a copy of the Notice of Judge Dowd's Order Vacating "Proposed Memorandum and Opinion" was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Steven J. Miller  
STEVEN J. MILLER (0014293)